



## ***Frequently Asked Questions About the Withdrawal of the Proposed Rule to List the Flat-Tailed Horned Lizard as Threatened***

### ***Q. What is the basis for withdrawing the proposed rule to list the flat-tailed horned lizard as threatened under the Endangered Species Act?***

The U.S. Fish and Wildlife Service (Service) withdrew the 1993 proposed rule to list the flat-tailed horned lizard under the Endangered Species Act of 1973, as amended (Act), because we found the degree of threats to the species are not as significant as earlier believed, and current available data do not indicate that threats to the species and its habitat are likely to endanger the species in the foreseeable future throughout all or a significant portion of its range.

### ***Q. What are the five factors used to determine if a species warrants listing as endangered or threatened under the Act?***

The term endangered, as defined under the Act, refers to any species which is likely to become **extinct** within the foreseeable future throughout all or a significant portion of its range, whereas threatened is defined as a species that is likely to become **endangered** within the foreseeable future throughout all or a significant portion of its range.

Section 4(a)(1) of the Act requires us to determine if a species is endangered or threatened because of any one or more of the following factors:

- A) the present or threatened destruction, modification or curtailment of its habitat or range;
- B) overutilization for commercial, recreational, scientific, or educational purposes;
- C) disease or predation;
- D) the inadequacy of existing regulatory mechanisms; or
- E) other natural or manmade factors affecting its continued existence.

### ***Q. Why did the Service reinstate the 1993 proposed rule when the proposal was previously withdrawn in 1997?***

On November 29, 1993, the Service published a proposed rule to list the flat-tailed horned lizard as threatened, under the Act. The Service withdrew its proposal on July 15, 1997, based on three primary factors: 1) population trend data did not conclusively demonstrate significant population declines; 2) some of the threats to the species' habitat had become less serious since the proposed rule was published; and 3) the Service believed the Conservation Agreement and Flat-Tailed Horned Lizard Rangewide Management Strategy would further reduce threats to the species.

Following the Service's decision to withdraw the proposed rule, Defenders of Wildlife filed a lawsuit in the U.S. District Court for the Southern District of California. The District Court upheld the Service's decision to withdraw the 1993 proposed rule, but the ruling was appealed by the plaintiffs.

On July 31, 2001, the Ninth Circuit Court of Appeals vacated the District Court's ruling and sent the case back to the lower court. The District Court subsequently issued an order on October 24, 2001, requiring the Service to announce the reinstatement of the 1993 proposed rule and to make a final listing determination within 12 months of announcing the reinstatement.

The Service published a notice in the Federal Register on December 26, 2001, announcing the reinstatement of the proposed rule to list the flat-tailed horned lizard as threatened pursuant to the Act.

After receiving and reviewing data and information about the reinstatement of the 1993 proposed rule, the Service determined that flat-tailed horned lizard does not warrant listing under the Act. The basis for our second decision to withdraw the 1993 proposed rule is as follows: (1) the degree of threats to the species are not as significant as earlier believed; and (2) current available data do not indicate that threats to the species or its habitat are likely to endanger the species in the foreseeable future throughout all or a significant portion of its range.

***Q. If the flat-tailed horned lizard is not listed under the Act how can it be protected?***

Although the Service determined the flat-tailed horned lizard does not warrant listing under the Act, there are efforts underway that can help to conserve the species.

The State of California considers the flat-tailed horned lizard a species of special concern and the State of Arizona has included it on their draft List of Wildlife of Special Concern. Both states prohibit the collection of flat-tailed horned lizards, except by permit.

There is also an ongoing, cooperative effort by seven Federal and State agencies to implement a Flat-Tailed Horned Lizard Rangewide Management Strategy to conserve and manage habitat to support viable populations of the species throughout its range in the United States.

The Service is also working with the Coachella Valley Association of Governments and the Agua Caliente Band of Cahuilla Indians to develop a Multiple Species Habitat Conservation Plan that may conserve an a yet to be determined amount of habitat for flat-tailed horned lizards in the Coachella Valley.

***Q. What agencies participate in the Rangewide Management Strategy and what does it entail?***

In June 1997, seven Federal and State agencies signed a Conservation Agreement (CA) to implement a Flat-Tailed Horned Lizard Rangewide Management Strategy (Management Strategy). Signatories to the CA include the Service, Bureau of Land Management, Bureau of Reclamation, U.S. Marine Corps, U.S. Navy, Arizona Game and Fish Department, and the California Department of Parks and Recreation.

The Management Strategy is designed to provide a frame work for conserving sufficient habitat to maintain several viable populations of the flat-tailed horned lizard throughout the species' range in the United States.

As part of the Management Strategy there are nine high-priority actions, with associated sub-actions, considered necessary to undertake in the near term to conserve the species and prevent irreversible

population declines. These are the nine top priority actions: (1) delineation and designation of five MAs and one flat-tailed horned lizard research area; (2) define and implement management actions necessary to minimize loss or degradation of habitat; (3) rehabilitate damaged or degraded habitat in the MAs; (4) attempt to acquire from willing sellers, all private lands that occur within the MAs; (5) maintain or establish effective habitat corridors between naturally adjacent populations; (6) coordinate activities and funding among the participating agencies and agencies from the State of Mexico; (7) promote the purposes of the strategy through law enforcement and public education; (8) encourage and support research that will promote conservation of the species or desert ecosystems and will effectively define and implement necessary management actions inside and outside the MAs; and (9) continue inventory and monitoring efforts.

***Q. Has the Management Strategy been effective in conserving the flat-tailed horned lizard?***

The signatories to the Conservation Agreement are making a good faith effort to implement the Management Strategy. Some of the high-priority tasks have not been fully implemented, thereby, reducing the overall effectiveness of the Management Strategy. However, it should be noted that full implementation is subject to staffing and funding constraints.

Some of the top-priority actions and associated sub-actions have not been implemented. Specifically, the posting of signs indicating ‘closed’, ‘open’, or ‘limited’ off-road vehicle routes; reduction in off-highway vehicle route densities within the MAs; and providing adequate law enforcement are actions that have not yet been fully implemented. Additionally, the official designation of the MAs has not occurred, although boundary descriptions have been completed and the participating agencies have continued to recognize the boundaries of the MAs.

***Q. Does the decision to withdraw the proposed listing of the species mean that it does not face any threats?***

No. Habitat for the flat-tailed horned lizard has become fragmented due to impacts resulting from large-scale agricultural and urban development, and the presence of human-related and natural barriers (e.g., All American Canal, Colorado River). The distribution of flat-tailed horned lizards in the United States appears to be divided into four broadly defined, geographically discrete populations - three in California and one in Arizona.

The population of flat-tailed horned lizards in the Coachella Valley is isolated from the other populations by extensive agricultural development and the Salton Sea. Most of the habitat for the species in the Coachella Valley is located on private or Tribal land and may be subject to future development, however, the habitat in the Coachella Valley accounts for only about one percent of the total range of the species (including Mexico). The Service does not currently have scientific information indicating the population of flat-tailed horned lizards in the Coachella Valley is biologically, behaviorally, or genetically unique, or contributes individuals to other populations of the species through emigration.

If information does become available to indicate the Coachella Valley population is ecologically or biologically significant, we may reconsider its status for listing under the Act, pursuant to our Policy Regarding the Recognition of Distinct Vertebrate Population Segments.

